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Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO IVAN PALOS MARQUEZ, Defendant.	)	Case No.: 08CR0547-JM TABLE OF CONTENTS FOR EXHIBITS IN SUPPORT OF GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT

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EXHIBIT 1

U.S. Departm... of Justice

Karen P. Hewitt
United States Attorney
Southern District of California

Caroline P. Han (619) 557-5220
Assistant United States Attorney Fax (619) 235-4716

San Diego County Office
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880 Front Street, Room 6293
San Diego, California 92101-8893

Imperial County Office
516 Industry Way, Suite C
Imperial, CA 92251

February 14, 2008

Erick L. Guzman, Esq.
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, CA 92101-5008
Fax 687-2666

Re: Early Disposition (Fast-Track) Program Offer in the case of
U.S. v. Ricardo Ivan Palos-Marquez, Magistrate Case No. 08MJ0385

Dear Mr. Guzman:

As you know, the Attorney General of the United States and the United States Attorney for the Southern District of California have approved an Early Disposition (Fast-Track) Program for this district. Your client will be offered the opportunity to receive a fast-track disposition offer, described below, and the United States will move the Court to depart downward two offense levels under USSG § 5K3.1, provided your client complies with the following fast-track program requirements, to which your client will specifically agree in the plea agreement:

1. waive indictment on or before the first preliminary hearing date;

2. stipulate in writing on or before the first preliminary hearing date that:

   a. the material witnesses:

      (1) are aliens with no lawful right to enter or remain in the United States;

      (2) entered the United States illegally on or about a date certain;

      (3) were found in a vehicle driven by defendant and that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;

      (4) were paying or having others pay, on their behalf, to defendant/others to be brought into the United States illegally and/or transported illegally to their destination therein; and,

(5) may be released and remanded immediately to the Department of Homeland Security and returned to their country of origin.

b. after the material witnesses are ordered released by the Court pursuant to this motion, if defendant does not plead guilty to the charge set forth below, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

(1) the stipulated facts set forth in 2.a.(1)-(5) above shall be admitted as substantive evidence;

(2) the United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

(3) understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

3. execute and file a Waiver of Indictment and Stipulation of Fact and Joint Motion for Release of Material Witness(es) at the first preliminary hearing date and participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily enters into it;

4. file or argue no substantive motions, including those described in Fed. R. Crim. P. 12;

5. waive the right to appeal or collaterally attack the plea, conviction, or sentence;

6. if defendant is not a United States citizen or national, stipulate and agree to an order of removal from the United States entered by Executive Office for Immigration Review or authorized Department of Homeland Security official; and unconditionally waive all rights to appeal, reopen, or collaterally attack the order of removal;

7. provide the signed, original plea agreement to the Government not later than five business days before the disposition date; and,

8. plead guilty to the charge **within 30 days** of arraignment on the complaint initially filed against defendant.

Further, because the purpose of the early disposition (fast-track) program is to expedite the resolution of the charges against your client, thereby saving valuable investigative, prosecutorial and judicial resources, the requirement that the signed, original plea agreement be returned in a timely manner is an essential term. If we do not receive it on time, the disposition offer will be revoked and we will seek your client's indictment on the underlying charge(s). Moreover, in the event that your client seeks a delay of the disposition to a date beyond 30 days of arraignment, the United States may in its sole discretion revoke the disposition offer contained in this plea agreement and seek your client's indictment on the underlying charge(s).

As part of this disposition, your client will plead guilty to an Information charging Transportation of Illegal Aliens and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II). Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will agree to the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable) under the U.S. Sentencing Guidelines (USSG):

Base Offense Level [USSG § 2L1.1(a)(3)]	12
Prior Immigration Felony [2L1.1(b)(3)]	0*
Substantial Risk [USSG § 2L1.1(b)(6)] (Increase by 2 levels, but if the resulting offense level is less than level 18, increase to level 18)	18
Acceptance of Responsibility [USSG § 3E1.1]	-3
Stipulated Fast-Track Departure [USSG § 5K3.1]	-2
Total Offense Level	**13**

* **There is no agreement regarding defendant's criminal history category. However, if defendant has previously sustained a conviction for a felony immigration and naturalization offense, the parties will recommend a +2 adjustment, pursuant to USSG 2L1.1(b)(3)(A). If defendant has previously sustained two or more such felony immigration convictions, the parties will recommend a +4 adjustment, pursuant to USSG 2L1.1(b)(3)(B).**

In exchange for your client's guilty plea and sentencing on the Information and provided defendant complies with all terms of the plea agreement, the Government will agree not to charge him/her with violating 8 U.S.C. § 1324(a)(2)(B)(ii), which, under the facts of this case, carries a five-year mandatory minimum sentence.

In the plea agreement, the parties will agree not to recommend any upward or downward adjustments other than those listed above. The parties will agree not to recommend any upward or downward departures (including any criminal history departures under USSG § 4A1.3), except as set forth herein, and your client may not file or argue substantive motions, including those described in Fed. R. Crim. P. 12. The parties will have no agreement as to your client's Criminal History Category (CHC). Regarding custody, the parties will agree that the Government will recommend that your client be sentenced to the **low end** of the guideline range as calculated by the Government pursuant to the plea agreement, unless your client is found to be in CHC I, in which case the parties will agree that your client should be sentenced to 13 months' imprisonment.

In exchange for the Government's concessions in the plea agreement, your client will waive, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, unless the Court imposes a custodial sentence greater than the high end of the guideline range (or statutory mandatory minimum term, if applicable) recommended by the Government pursuant to the agreement at the time of sentencing. If the custodial sentence is greater than the high end of that range, your client may appeal, but the Government will be free to support on appeal the sentence actually imposed. If your client believes the Government's recommendation is not in accord with this agreement, your client will object at the time of sentencing; otherwise the objection will be deemed waived. If defendant breaches this plea agreement, at any time, by appealing or collaterally attacking the conviction or sentence, in any way, the Government may prosecute defendant for any counts, including those with mandatory minimum sentences, dismissed or not charged pursuant to this plea agreement. Additionally, the Government may use any factual admissions made by defendant pursuant to this plea agreement in any such prosecution.

I have enclosed the Information, Waiver of Indictment, and a Stipulation of Fact and Joint Motion for Release of Material Witness(es), that will be filed if your client chooses to accept this offer. I have also enclosed a plea agreement incorporating the terms described above and an Acceptance of Disposition Offer Form. Finally, I have enclosed all currently available discovery. The terms of those documents are not subject to modification, and you may not strike or interlineate any portion of them. Please review the enclosed documents and discovery promptly to determine whether issues exist which need our discussion (e.g., incorrect factual basis, guideline calculations or criminal history information). In view of the compressed time-line in this fast-track program, if you wait until the date the original, signed plea agreement is due to be returned to our office to raise such issues, that delay may cause a revocation of the offer.

To accept this fast-track offer, you and your client must do the following three things:

1. You must call me not later than **Thursday, February 21, 2008,** to inform me that your client accepts the offer and you must confirm that acceptance in writing (via fax is satisfactory - see enclosure (3)). If the Government's offer is not accepted within that time-frame (and acceptance of the offer is established by our timely receipt of the signed and completed acceptance form), the case will be presented to a grand jury for indictment and the offer will not be renewed.

2. You and your client must execute: (a) the Waiver of Indictment, and (b) the Stipulation of Fact and Joint Motion for Release of Material Witness(es), and deliver the signed documents to the Assistant U.S. Attorney appearing before the presiding Magistrate Judge on the date scheduled for the *first* preliminary hearing. The United States will at that time file the Information and the parties will jointly request that the case be scheduled for a guilty plea in the U.S. District Court during *the following week.*

3. As noted above, the original plea agreement must be signed by you and your client and returned to me not later than five business days before the disposition date, and the guilty plea must be entered **on or before March 14, 2008**.

Please inform me by **Thursday, February 21, 2008,** if you agree to the terms set forth above. If I have not received the signed, completed acceptance form (by fax is acceptable) by 5:00 p.m. on that date, the disposition offer contained in this letter will be revoked and the case will be presented to a grand jury for indictment.

If you have any questions, please contact me at (619) 557-5220.

Very truly yours,

KAREN P. HEWITT
United States Attorney

CAROLINE P. HAN
Assistant United States Attorney

Enclosures
(1) Acceptance of Disposition Offer Form
(2) Information and Waiver of Indictment
(3) Stipulation of Fact and Joint Motion for Release of Material Witness(es)
(4) Plea Agreement
(5) Discovery

Copy to: Addressee (Via Fax - without Discovery)
CPH:es

ACCEPTANCE OF DISPOSITION OFFER - 8 U.S.C. § 1324

To: Caroline P. Han
Assistant United States Attorney
Fax Number: 619-235-4716

From: Erick L. Guzman
Defense Counsel

Re: Acceptance of Early Disposition (Fast-Track) Program Offer in the case of U.S. v. Ricardo Ivan Palos-Marquez, Magistrate Case No. 08MJ0385

1. My client accepts the Government's offer to plead guilty to an Information charging one count of violating Title 8, United States Code, Section 1324, as contained in your letter of February 14, 2008.

2. My client understands that this disposition is conditioned on the original plea agreement being signed by me and my client and returned to you not later than five business days before the disposition date, and the guilty plea(s) being entered **on or before March 14, 2008.**

____
ERICK L. GUZMAN
Defense Counsel

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO IVAN PALOS-MARQUEZ, Defendant.	Criminal Case No. ___________ I N F O R M A T I O N Title 8, U.S.C., Secs. 1324(a)(1)(A)(ii) and (v)(II) - Transportation of Illegal Aliens and Aiding and Abetting

The United States Attorney charges:

On or about February 7, 2008, within the Southern District of California, defendant RICARDO IVAN PALOS-MARQUEZ, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Vicente Alvardo-Victoria, had come to, entered and remained in the United States in violation of law, did transport and move, said alien within the United States in furtherance of such violation of law; in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(ii) and (v)(II).

DATED: _______________.

KAREN P. HEWITT
United States Attorney

CAROLINE P. HAN
Assistant U.S. Attorney

CPH:es:San Diego
2/14/08

AO 455 (Rev. 5/85) Waiver of Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

RICARDO IVAN PALOS-MARQUEZ

WAIVER OF INDICTMENT

CASE NUMBER: ____________________

I, RICARDO IVAN PALOS-MARQUEZ, the above-named defendant, who is accused of committing the following offenses:

Transportation of Illegal Aliens and Aiding and Abetting, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii) and (v)(II) (Felony).

being advised of the nature of the charges, the proposed information, and of my rights, hereby waive in open court on ____________________ prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

____
Defendant

____
Defense Counsel

Before ____________________
Judicial Officer

KAREN P. HEWITT
United States Attorney
CAROLINE P. HAN
Assistant United States Attorney
California State Bar No. 250301
United States Attorney's Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101
Telephone: (619) 557-5220

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO IVAN PALOS-MARQUEZ, Defendant.	Magistrate Case No. 08MJ0385 **STIPULATION OF FACT AND JOINT MOTION FOR RELEASE OF MATERIAL WITNESS(ES) AND ORDER THEREON** **(Pre-Indictment Fast-Track Program)**

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caroline P. Han, Assistant United States Attorney, and defendant RICARDO IVAN PALOS-MARQUEZ, by and through and with the advice and consent of Erick L. Guzman, counsel for defendant, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

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CPH:es:2/14/08

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **March 14, 2008**.

4. The material witnesses, Apolinar Santos-De Asis, Perfecto Toto-Cruz, Vicente Alvarado-Victoria and Francisco Diego-Benabe, in this case:

a. Are aliens with no lawful right to enter or remain in the United States;

b. Entered or attempted to enter the United States illegally on or about February 7, 2008;

c. Were found in a vehicle driven by defendant in or near Jamul, California approximately three miles east of the Otay Mesa, California Port of Entry, and approximately five miles north of the international Boundary between Mexico and the United States. Defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;

d. Were having others pay on their behalf an undisclosed amount of money to $1,800 to others to be brought into the United States illegally and/or transported illegally to their destination therein; and,

e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;

b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

6. By signing this stipulation and joint motion, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness(es) to the Department of Homeland Security for return to their country of origin.

It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

Dated: ________________.

____
CAROLINE P. HAN
Assistant United States Attorney

Dated: ________________.

____
ERICK L. GUZMAN
Defense Counsel for Palos-Marquez

Dated: ________________.

____
RICARDO IVAN PALOS-MARQUEZ
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: ________________.

____
United States Magistrate Judge

KAREN P. HEWITT
United States Attorney
CAROLINE P. HAN
Assistant U.S. Attorney
California State Bar No. 250301
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-5220

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO IVAN PALOS-MARQUEZ, Defendant.	Criminal Case No. ____________ PLEA AGREEMENT (Pre-Indictment Fast-Track Program)

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, Karen P. Hewitt, United States Attorney, and Caroline P. Han, Assistant United States Attorney, and defendant, RICARDO IVAN PALOS-MARQUEZ, with the advice and consent of Erick L. Guzman, counsel for defendant, as follows:

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CPH:es:2/14/08

I

THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging defendant with:

> On or about February 7, 2008, within the Southern District of California, defendant RICARDO IVAN PALOS-MARQUEZ, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Vicente Alvarado-Victoria, had come to, entered and remained in the United States in violation of law, did transport and move, said alien within the United States in furtherance of such violation of law; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii) and (v)(II).

B. Early Disposition (Fast-Track) Program. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Southern District of California.

C. Program Requirements. As part of this plea agreement, and as set forth in Section X.A.5. below, the United States will move the Court to depart downward two offense levels under USSG § 5K3.1 provided defendant complies with the following early disposition (Fast-Track) program requirements, to which defendant specifically agrees:

1. to waive indictment on or before the first preliminary hearing date;

2. to stipulate in writing on or before the first preliminary hearing date that:

a. the material witnesses:

(1) are aliens with no lawful right to enter or remain in the United States;

Def. Initials ________

____CR ____________

(2) entered the United States illegally on or about a date certain;

(3) were found in a vehicle driven by defendant and that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;

(4) were paying or having others pay on their behalf, to defendant or others to be brought into the United States illegally and/or transported illegally to their destination therein; and,

(5) may be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

(b) after the material witnesses are ordered released by the Court pursuant to this motion, if defendant does not plead guilty to the charge described above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

(1) the stipulated facts set forth in paragraph c.(2)(a)(1)-(5) above shall be admitted as substantive evidence;

(2) the United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

(3) understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), "testimonial" hearsay statements

are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

3. to execute and file a Waiver of Indictment and a Stipulation of Fact and Joint Motion for Release of Material Witness(es) at the first preliminary hearing date;

4. to file or argue no substantive motions, including those described in Fed. R. Crim. P. 12;

5. to plead guilty to the charge **within 30 days** of arraignment on the complaint initially filed against defendant;

6. to waive the right to appeal or collaterally attack the plea, conviction, or sentence; and,

7. if defendant is illegally in the United States, to stipulate and agree to an order of removal from the United States entered by Executive Office for Immigration Review or authorized Department of Homeland Security official, and unconditionally waives all rights to appeal, reopen, or collaterally attack the order of removal (see Section XI [Defendant Waives Appeal and Collateral Attack] below).

D. Timeliness/Offer Revocation. The disposition contemplated by this agreement is conditioned on (1) the original plea agreement being signed by defendant and defense counsel and returned to Government counsel not later than five business days before the disposition date, and (2) the guilty plea being entered on or before **March 14, 2008**. Therefore, in the event that defendant seeks a delay in the disposition in this case to a date beyond 30 days of arraignment, or otherwise fails to comply with these timeliness

Def. Initials ________

_____CR ________

requirements, the United States may in its sole discretion revoke the disposition offer contained in this plea agreement and seek defendant's indictment on the underlying charge(s).

E. No Prosecution on Mandatory Minimum Count. In exchange for defendant's guilty plea and sentencing on the single-count Information and provided defendant complies fully with all terms of this plea agreement, the Government agrees not to charge him with violating 8 U.S.C. § 1324(a)(2)(B)(ii), which, under the facts of this case, carries a five-year mandatory minimum sentence.

F. Forfeiture. The defendant further agrees to the administrative and/or civil forfeiture of all properties seized in connection with this case which the defendant agrees are subject to forfeiture to the United States pursuant to Title 8, United States Code, Section 1324(b). The defendant further waives his right to receive timely notice of administrative forfeiture as set forth in 18 U.S.C. § 983(a) and waives receipt of all notice of forfeiture in this and all other administrative and civil proceedings. Defendant warrants and represents as a material fact that all property in which he has any interest may be forfeited as described above.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. The person specified in the count is an alien;

2. The person specified in the count was not lawfully in the United States;

Def. Initials ________

_____CR ____________

3. Defendant knew, or acted in reckless disregard of the fact that the person specified in the count was not lawfully in the United States;

4. Defendant knowingly transported or moved, or attempted to transport or move, the person in order to help him remain in the United States illegally; and,

5. Defendant acted with the intention of violating the immigration laws of the United States.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

1. On February 7, 2008, defendant was the driver of a green 1996 Dodge Ram, bearing California license number 7R41895 ("the vehicle").

2. Defendant drove the vehicle and aided in the transport of four aliens in an unsafe manner within the Southern District of California. Specifically, Defendant drove westbound in an eastbound lane and into oncoming traffic while the four aliens hid on the floor in the back seat of the cabin bay. The aliens, therefore, had no safety belts or other safety devices.

3. Vicente Alvarado-Victoria, and at least three others in the vehicle, were aliens not lawfully in the United States.

4. Defendant knew, or was in reckless disregard of the fact, that the four aliens in the vehicle, including Vicente Alvarado-Victoria, were not lawfully in the United States.

5. Defendant knowingly transported or moved, or attempted to transport or move the aliens in the vehicle in order to help them remain in the United States illegally.

6. The material witness, Vicente Alvarado-Victoria was having others pay on his behalf $1,800 to others to be brought into the United States illegally and/or transported illegally to his destination therein.

7. Defendant committed the above acts with the intention of violating United States immigration laws.

Def. Initials ________

____CR ________

III

PENALTIES

Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:

A. a maximum 5 years in prison;

B. a maximum $250,000 fine;

C. a mandatory special assessment of $100.00 per count; and

D. a term of supervised release of 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring Defendant to serve in prison all or part of the term of supervised release.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

A. continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;

B. a speedy and public trial by jury;

C. the assistance of counsel at all stages of trial;

D. confront and cross-examine adverse witnesses;

E. present evidence and to have witnesses testify on behalf of defendant; and,

F. not testify or have any adverse inferences drawn from the failure to testify.

V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The Government represents that any information establishing the factual innocence of defendant known to the undersigned prosecutor in this case has been turned over to defendant. The Government will

Def. Initials ________
_____CR ________

continue to provide such information establishing the factual innocence of defendant.

Defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. Defendant acknowledges, however, that by pleading guilty defendant will not be provided this information, if any, and Defendant also waives the right to this information. Finally, defendant agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

VI

DEFENDANT'S REPRESENTATION THAT GUILTY PLEA IS KNOWING AND VOLUNTARY

Defendant represents that:

A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel, and has a clear understanding of the charges and the consequences of this plea;

B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement or otherwise disclosed to the court;

C. No one has threatened defendant or defendant's family to induce this guilty plea; and,

D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.

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Def. Initials ________

____CR ________ 21

VII

AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF CALIFORNIA

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by the defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and the court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

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Def. Initials ________

_____CR ________ 22

IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is **not binding on the Court**. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

X

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable):

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Def. Initials ________

____CR ________

1.	Base Offense Level [USSG § 2L1.1(a)(3)]	12
2.	Prior Immigration Felony [USSG § 2L1.1(b)(3)]	0*
3.	Substantial Risk [USSG § 2L1.1(b)(6)] (Increase by 2 levels, but if the resulting offense level is less than level 18, increase to level 18)	18
4.	Acceptance of Responsibility [USSG § 3E1.1]	-3
5.	Departure for Fast Track [USSG § 5K3.1]	-2
	Total Offense Level	**13**

*** There is no agreement regarding defendant's criminal history category. However, if defendant has previously sustained a conviction for a felony immigration and naturalization offense, the parties will recommend a +2 adjustment, pursuant to USSG 2L1.1(b)(3)(A). If defendant has previously sustained two or more such felony immigration convictions, the parties will recommend a +4 adjustment, pursuant to USSG 2L1.1(b)(3)(B).**

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.4 above, the Government will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or
2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or
5. Attempts to withdraw the plea, or
6. Refuses to abide by any lawful court order.

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____CR ________

7. Contests or assists any third party in contesting the forfeiture of property(ies) seized or forfeited in connection with this case.

C. ADJUSTMENTS AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

The parties agree that defendant may request additional downward adjustments and sentence reductions under 18 U.S.C. § 3553 and that the Government will oppose any downward adjustments and sentence reductions not set forth above.

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

The parties have **no** agreement as to defendant's Criminal History Category.

E. DEPARTURES AND SENTENCE REDUCTIONS UNDER 18 U.S.C. § 3553

The parties agree that defendant may request additional downward departures, including criminal history departures under USSG § 4A1.3., and sentence reductions under 18 U.S.C. § 3553 and that the Government will oppose any downward departures or sentence reductions not set forth above.

F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

The parties agree that the facts in the "factual basis" paragraph of this agreement are true, and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

The parties agree that the Government will recommend that defendant be sentenced to the low end of the advisory guideline range as calculated by the Government pursuant to this agreement. However, if the Court adopts an offense level or downward adjustment or departure below the Government's recommendations in this plea agreement, the Government will recommend a sentence as near as

Def. Initials ________

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possible to what the sentence would have been if the Government's recommendations had been followed.

H. SPECIAL ASSESSMENT

The parties will jointly recommend that defendant pay a special assessment in the amount of $100.00 to be paid forthwith at time of sentencing. The special assessment shall be paid through the office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

I. STIPULATED REMOVAL

If defendant is not a United States citizen or national, either before or immediately following sentencing, defendant agrees to an order of removal from the United States entered by Executive Office for Immigration Review or authorized Department of Homeland Security official. Defendant understands that defendant will not be removed until defendant has served any criminal sentence imposed in this or any other case. Defendant further waives any right to appeal, reopen or challenge the removal order.

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, unless the Court imposes a custodial sentence above the greater of the high end of the guideline range recommended by the Government pursuant to this agreement at the time of sentencing or statutory mandatory minimum term, if applicable. If the custodial sentence is greater than the high end of that range, the defendant may appeal, but the Government will be free to support on

Def. Initials ________

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appeal the sentence actually imposed. If defendant believes the Government's recommendation is not in accord with this agreement, defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

If defendant breaches this plea agreement, at any time, by appealing or collaterally attacking the conviction or sentence, in any way, the Government may prosecute defendant for any counts, including those with mandatory minimum sentences, dismissed or not charged pursuant to this plea agreement. Additionally, the Government may use any factual admissions made by defendant pursuant to this plea agreement in any such prosecution.

XII

CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA

This plea agreement is based on the understanding that, prior to defendant's sentencing in this case, defendant has not committed or been arrested for any offense not known to the Government prior to defendant's sentencing. This plea agreement is further based on the understanding that defendant has committed no criminal conduct since defendant's arrest on the present charges, and that defendant will commit no additional criminal conduct before sentencing. If defendant has engaged in or engages in additional criminal conduct during this period, or breaches any of the terms of any agreement with the Government, the Government will not be bound by the recommendations in this plea agreement, and may recommend any lawful sentence. In addition, at its option, the Government may move to set aside the plea.

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XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT
United States Attorney

____________________ ____________________
DATED CAROLINE P. HAN
Assistant U.S. Attorney

____________________ ____________________
DATED ERICK L. GUZMAN
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

____________________ ____________________
DATED RICARDO IVAN PALOS-MARQUEZ
Defendant

EXHIBIT 2

UNITED STATES ATTORNEY'S OFFICE

San Diego County Office
880 Front Street, Rm 6293
San Diego, CA 92101-8893

Imperial County Office
321 So. Waterman Avenue
Rm 204
El Centro, CA 92243-2215

SOUTHERN DISTRICT OF CALIFORNIA

FACSIMILE COVER SHEET

TRANSMITTED BY:	Caroline Han AUSA, General Crimes	TIME:	12:42 pm
		DATE:	February 22, 2008

TO:	Erick Guzman, Esq.		
ORGANIZATION:			
PHONE NUMBER:	619-685-3738	FAX NUMBER:	619-687-2666

Pages Total (including cover page): 12

Re: US v. Palos-Marquez, 08MJ0385

Erick:

Attached please find 3 ROIs regarding 3 of your client's other apprehensions by the Border Patrol in relation to alien smuggling.

Thank you,
Caroline Han

COMMENTS:

FROM:	AUSA CAROLINE HAN		
SECTION:	G.C., Grand Jury Section		
PHONE NUMBER:	619-557-5220	FAX NUMBER:	619-235-2757

NOTE: If you do not receive the total number of pages indicated above, please call the individual listed above.
IMPORTANT: If this fax was erroneously sent to your fax number, please contact sending individual immediately.

EXHIBIT 3

I-214 (English)

Before we ask you any questions, you must understand your rights:

- You have the right to remain silent.
- Anything you can say can be used against you in court, or in any immigration or administrative proceeding.
- You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
- If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time.
- You also have the right to stop answering at any time until you talk to a lawyer.

Do you understand each of these rights as I have read them to you? RPM Initials
Entiende usted a cada uno de sus derechos como se los he leido?
Are you willing to answer my questions without an attorney being present? RPM Initials
Esta usted dispuesto a contestar mis preguntas sin tener a un abogado presente?

Ricardo
Name/Nombre

Ricardo Palos M.
Signature/Firma

2-7-08 11:03pm
Date /Time

Agent

11:03PM
Date/Time

Witness

Ricardo Palos M.